

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:RFP:CHI:2:TL-N-1649-01  
JMCascino

date: April 27, 2001

to: Financial Products Field Specialist Paul Nadick  
LMSB Group 1912

from: Associate Area Counsel, (LMSB) Chicago

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subject: [REDACTED]  
EIN [REDACTED]  
Taxable Years [REDACTED] through [REDACTED]  
Earliest SOL: [REDACTED]  
Consent Language  
Request For An Advisory Opinion

This memorandum responds to your request for assistance dated March 12, 2001. This memorandum should not be cited as precedent. The issues herein do not appear to be within the scope of the responsibility of any Industry Counsel.

QUESTIONS PRESENTED

1. Under the facts set forth below, should Consent to Extend the Time to Assess Tax (Form 872), Investor Level Consent to Extend the Time to Assess Tax and Tax Attributable to Items of a Partnership (Form 872-I) or both be used to obtain consents to extend time to assess tax and tax attributable to items of a partnership in the above-entitled case?

2. Under the facts set forth below, should Consent to Extend Time to Assess Liability at Law or in Equity for Income, Gift, and Estate Tax Against a Transferee or Fiduciary (Form 977) and/or Transferee Agreement (2045) be obtained in this case?

3. Under the facts set forth below, how should the name line and taxpayer signature line on the Consent Form(s) be prepared?

FACTS

On [REDACTED], [REDACTED] EIN [REDACTED]  
[REDACTED] ("Old [REDACTED]") merged into [REDACTED]  
[REDACTED] ("[REDACTED]"). A taxpayer identification number was not

obtained for [REDACTED]. The merger agreement between Old [REDACTED] and [REDACTED] provided that Old [REDACTED] ceased to exist as of the date of the merger and that [REDACTED] assumed the liabilities of Old [REDACTED]. On the same day, [REDACTED] merged into [REDACTED] EIN [REDACTED] ("New [REDACTED]"). The merger agreement between [REDACTED] and New [REDACTED] provided that [REDACTED] ceased to exist as of the date of the merger and New [REDACTED] assumed the liabilities of [REDACTED]. The reorganization was the subject of [REDACTED].

For the taxable year [REDACTED], Old [REDACTED] did not have any subsidiaries. For the taxable year [REDACTED], Old [REDACTED] had one subsidiary. For the taxable years [REDACTED] and [REDACTED], Old [REDACTED] had two subsidiaries. Old [REDACTED] was also a partner in at least two partnerships during the years at issue.

You are in the process of conducting the audit of the U.S. Income Tax Return (Form 1120) of Old [REDACTED] EIN [REDACTED] for the taxable years [REDACTED] through [REDACTED]. Pursuant to previously executed Consents To Extend Time to Assess Tax (Forms 872), the period of limitations for each of the taxable years [REDACTED], [REDACTED] and [REDACTED] will expire on [REDACTED]. The previous consents did not contain any terms with respect an extension of the period of limitations with respect to partnership items. The three year period of limitations under I.R.C. § 6501(a) for the taxable year [REDACTED] will expire on [REDACTED]. You desire to obtain a consent to extend the period of assessment of income tax for each of the taxable years [REDACTED] through [REDACTED] and have requested advice concerning the above-mentioned questions.

#### CONCLUSION

1. Because the previous Forms 872 for the taxable years [REDACTED], [REDACTED] and [REDACTED] did not contain any provisions with respect to an extension of the period of limitations with respect to partnership items, the period of limitations for the assessment of tax attributable to partnership items was not extended by the previous Forms 872. Unless less than three years will have expired from the date of the filing of any of the partnership returns for the years [REDACTED], [REDACTED] and [REDACTED] to the time the new Forms 872 will be executed, Forms 872-I would not be effective to extend the periods of limitations for the assessment of partnership items for those years. Accordingly, unless less than three years will have expired from the date of the filing of any of the partnership returns for the years [REDACTED], [REDACTED] and [REDACTED] to the time the new Forms 872 will be executed, Forms 872 should be used in preparing consents for the [REDACTED], [REDACTED] and [REDACTED] taxable years. If you desire to reserve the opportunity to adjust any partnership items for the taxable year [REDACTED], Form 872-I should be

used in preparing the consent for the taxable year [REDACTED].

2. Because the respective merger agreements provided that [REDACTED] assumed the liabilities of OLD [REDACTED] and that New [REDACTED] assumed the liabilities of [REDACTED] with OLD [REDACTED] and [REDACTED] going out of existence as of the date of the respective mergers, you do not need to obtain an executed Form 977 or Form 2045 at this time.

3. a. With respect to the preparation of Form 872 for the taxable year [REDACTED], the name line should read,

"[REDACTED] ([REDACTED]) Successor to  
to [REDACTED] Successor to [REDACTED]  
[REDACTED] ([REDACTED])"

b. With respect to the preparation of Form 872 for the taxable years [REDACTED] and [REDACTED]<sup>1</sup>, the name line should read,

"[REDACTED] ([REDACTED]) Successor to  
[REDACTED] Successor to [REDACTED]  
([REDACTED]) and alternative agent for the [REDACTED]  
[REDACTED] group\*."

In the open space below paragraph (2) of Form 872, next to a reciprocal to the above-noted asterisk, state:

\*This is with respect to the consolidated tax liability of the [REDACTED] consolidated group for the taxable years ended [REDACTED] and [REDACTED].

c. Assuming you desire to reserve the ability to assess tax with respect to partnership items for the taxable year [REDACTED], Form 872-I should be used to obtain the extension of time to assess tax and assess tax attributable to items of a partnership for the taxable year [REDACTED]. With respect to the preparation of Form 872-I

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<sup>1</sup> We note that separate Forms 872 were previously obtained for the taxable years [REDACTED] and [REDACTED]. However, you may combine these two years on one Form 872 as indicated herein. If you do not intend to reserve the ability to extend the time to assess tax attributable to partnership items for the taxable year [REDACTED], the period of limitations for the taxable year [REDACTED] year could also be extended on the same Form 872 used for extending the periods of limitations for the [REDACTED] and [REDACTED] taxable years by making the appropriate modifications to include the taxable year [REDACTED].

for the taxable year [REDACTED], the name line should read,

" [REDACTED] ( [REDACTED] )  
Successor to [REDACTED] Successor to [REDACTED]  
[REDACTED] ( [REDACTED] ) and alternative agent  
for the [REDACTED]  
group\*.

In the open space below paragraph (2) of Form 872-I, next to a reciprocal to the above-noted asterisk, state:

\*This is with respect to the consolidated tax liability of the [REDACTED] consolidated group for the taxable year ended [REDACTED].

d. With respect to the preparation of each Form 872 or Form 872-I, the corporate name on the signature line should read "[REDACTED]." and the Form 872 or Form 872-I should be signed by an authorized officer of that corporation (New [REDACTED]).

In accordance with LMSB procedures, we are submitting this advisory opinion for review by our National Office and anticipate a response from the National Office in approximately ten days. As you know the response can supplement, modify and/or reject the advice contained herein. Accordingly, please take no action on the advice contained herein until such time as we notify you as to whether or not there are any exceptions or modifications to the advice contained herein as a result of the response received from the National Office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions concerning this matter, please do not hesitate to call me at (312) 886-9225 ext. 338.

STEVEN R. GUEST  
Associate Area Counsel

By: \_\_\_\_\_  
JAMES M. CASCINO